IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2005

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

S.A.NO.252 OF 1994

1.Gopalakrishnan
2.B.Srinivasan .. Appellants/Defendants

Vs.

Balasubramaniam .. Respondent/Plaintiff

This second appeal is preferred under Section 100 of CPC against the judgment and decree dated 28.7.1993 passed in AS No.193 of 1991 on the file of the Court of the first Additional District Judge, Salem against the judgment and decree dated 12.10.1988 passed in OS No.1421 of 1986 on the file of the Court of the Principal District Munsif at Namakkal.

For Appellants : Mr.J.R.K.Bhavanandam

For Respondent : Mr.Subramanian
for Mr.K.Jayaram

JUDGMENT

Aggrieved over the judgment of the learned I Additional District Judge, Salem made in AS No.193 of 1991, wherein the judgment of the trial court, namely the Principal District Munsif, Namakkal, made in OS No.1421 of 1986 was affirmed, the defendants have preferred this second appeal.

2.It was a suit filed by the respondent/plaintiff, seeking declaration of title in respect of landed property shown in the 'A' schedule and also declaration in respect of ½ share in the pooja right of Varadarajaperumal temple shown as 'B' schedule and consequently, for partition. The plaintiff's case as could be seen from the pleadings can be stated shortly thus:

The plaint described 'A' schedule property originally belonged to one Appasamy Iyer @ Eswara Iyer and in the year 1919, he executed a Will in favour of plaintiff's father Padmanaba Iyer and his wife Maragadammal and following the same, on the death of Eswara Iyer, the property came to the hands of Padmanaba Iyer and his wife

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Maragadammal. Since Padmanaba Iyer had no issues through Maragadammal, he married Dhanalakshmi in the year 1944 as the second wife. Maragadammal died intestate. Thus, the property came to the hands of Padmanaba Iyer. In the year 1953, the plaintiff was born to Padmanaba Iyer and his second wife Dhanalakshmi and on the death of Padmanaba Iyer, the property came to the hands of his wife Dhanalakshmi. The lands originally belonged to Temple. Since the property could not be cultivated and in view of the fact that the plaintiff was a child, the immovable properties, which were given to the plaintiff's family for the service rendered to temple and the ½ share in the pooja right, which was being enjoyed by the plaintiff's family, were entrusted to the defendants for being taken care of till the plaintiff's mother returns to the village with the plaintiff. Then, the plaintiff's mother took the plaintiff to outside the place and on return, there was a demand and exchange of notices and on refusal, the plaintiff filed a suit for declaration asked for and stated above.

3.The suit was resisted by the defendants stating that the landed property found in the schedule to the plaint is an Inam land and belonged to Varadarajaperumal temple, in which neither Easwara Iyer nor anybody, including the plaintiff, could claim any right, interest or title; that the Will executed by Easwara Iyer was not valid; that apart from that even as per the allegation in the plaint, Padmanaba Iyer married Dhanalakshmi during the life time of his first wife and it was also illegal and patta has also been granted in favour of the temple, on enquiry and thus, the plaintiff cannot make any claim over 'A' schedule landed properties and equally 'B' schedule pooja right exclusively belonged to the defendants, in which also the plaintiff cannot claim any right, alleging that it was an ancestral one and under the stated circumstances, the suit has got to be dismissed.

4.The trial court has framed necessary issues and on trial, the suit was decreed. The aggrieved defendants have preferred an appeal and on appeal, the judgment of the trial court was affirmed. Hence, the second appeal at the instance of the defendants.

5.At the time of admission, the following substantial question of law was formulated for consideration:

"Whether the suit is barred by limitation?"

6.This Court has heard the learned counsel for the appellants and also the respondent.

7.The learned counsel for the appellant inter-alia would submit that 'A' schedule landed property belonged to Varadarajaperumal temple, in which the plaintiff cannot make any claim and patta has also been issued in favour of temple; that the suit was also barred

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by limitation; that there was exchange of notices, in which the right of the plaintiff was denied; and that specific point of time is prescribed in the Limitation law and the plaintiff should have filed the suit within the time, but he has not done so. Added further the learned counsel that insofar as 'B' schedule pooja right was concerned, the defendants have been enjoying the same all along, as of right, in which the plaintiff cannot make any claim. But, without proper appreciation of both factual and legal positions, the courts below have granted decree, which has got to be set aside by this Court.

8.Heard the learned counsel for the respondent on the above contentions.

9.It was a suit filed by the plaintiff, seeking declaration of title in respect of 'A' schedule landed property and ½ share in pooja right in respect of 'B' schedule to the plaint. It is not in controversy that the suit land was originally belonged to Varadarajaperumal temple. It is also not in controversy that the suit landed properties were under the enjoyment of the defendants. The specific case of the plaintiff is that the property was actually given to the father-in-law of Padmanaba Iyer, by name Easwara Iyer, for the service rendered by him in the said temple and he has been in enjoyment of the same. In the year 1919, he executed a Will under Ex.A.1 in favour of Padmanaba Iyer and Maragadammal. It is pertinent to point of that the defendants never questioned the truth, genuineness or validity of Ex.A.1 Will. But, what were all contended was that the properties belonged to Temple and Easwara Iyer had no right over the same. Both the courts have pointed out that there is sufficient evidence available, indicating the enjoyment of same by Easwara Iyer and on his death, by Padmanaba Iyer and Maragadammal and even during the life time of Maragadammal, Padmanaba Iyer married Dhanalakshmi, through whom the plaintiff was born. On the death of Padmanaba Iyer, the property devolved upon Dhanalakshmi. Evidence has been recorded to the effect that the said landed properties were handed over by Dhanalakshmi to the defendants, taking into consideration the fact that the plaintiff was minor then and that she could not carry on cultivation and apart from that the plaintiff could not carry on pooja and she went away from the village and on return, there was exchange of notices.

10.It is pertinent to point out that even in the reply notice, it has been specifically admitted by the defendants that the property belonged to Temple. It is also pertinent to point out at this juncture that the defendants have not produced any material to show that how they got into possession of the land, except the mere allegations in the written statement and assertion through witnesses and they did not have any material except the defence plea that they have been in possession on their own right.

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11.In the instant case, the contention put forth by the defendants that the suit was barred by limitation has got to be stated only for the purpose of rejection. The possession of the service holder was only permissive possession and it cannot be adverse to that of true owner and in the instant case, the plaintiff has not disputed the fact that the property belonged to Temple, but it has been given to Easwara Iyer and he was in enjoyment of same and thereafter, by his family and the plaintiff is entitled to be in possession and to continue the same. The contention put forth by the learned counsel for the appellants that they were appointed as Trustees by the H.R. & C.E. in respect of temple and therefore, they could contest the suit would be of no avail, since there are specific allegations and proof that both landed properties and the pooja right were handed over by the plaintiff's mother to the defendants. Under the stated circumstances, such a plea cannot be raised by the defendants at any stretch of imagination. Hence, this Court is of the considered opinion that all the contentions put forth by the appellants' side have been rightly rejected by both the courts below. As regards the question of limitation, this Court is of the considered opinion that the suit is not barred by limitation for the reasons stated above. Hence, the second appeal fails and the same is dismissed. The parties are directed to bear their costs.

Vvk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1.The I Addl. District Judge, Salem

2.The Principal District Munsif, Namakkal

+1 CC to Mr.K.Jayaraman, Advocate, SR No.38070

+1 CC to Mr.P.B.Ramanujam, Advocate, SR No.38245

PS(CO)
BG/17.09.2005.

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